UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ISLAND ARCHITECTURAL WOODWORK INC. and VERDE DEMOUNTABLE PARTITIONS, INC., ALTER EGOS

And **Case 29-CA-124027**

NORTHEAST REGIONAL COUNCIL OF CARPENTERS

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Harry Liolis Esq. Counsel for Verde Demountable Partitions, Inc.,
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Decision

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case on February 25 and 26, 2015 in Brooklyn, New York. The charge and the amended charge were filed on March 10 and April 17, 2014. The Complaint that was issued on December 22, 2014 alleged as follows:

1. That the Union has been recognized by Island Architectural Woodwork Inc., pursuant to Section 9(a) of the Act and has maintained a contract effective from July 1, 2009 to June 30, 2013.

2. That in or about October 2013, the owners and managers of Island set up Verde Demountable Partitions Inc., for the purpose of evading the contractual obligations that Island had with the Union.

3. That in or about October 2013, Verde has performed work previously performed by the employees of Island.

4. That since October 2013, Verde has not applied the terms of the collective bargaining agreement to its employees.

5. That after January 13, 2014, Island has insisted as a condition of reaching a new agreement, that the Union permit Verde to perform work normally performed by Island.

7. That in February 2014, Island demanded that the Union agree that Verde's employees were not in the bargaining unit and that the Union waive any claims over such work performed by Verde.

8. That Island and Verde are alter egos.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

Findings and Conclusions

I. Jurisdiction

It is admitted and I find that the Respondents are employers engaged in commerce within the meaning of Section 2(1), (6) and (7) of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The alleged unfair labor practices

Island Architectural is a corporation that is engaged in the manufacture of high end custom made wood products used in offices and commercial buildings. Most of its customers, many of which are large banks and financial institutions, are located in the New York metropolitan area. Island was formed in or about 2005 by Edward Rufrano and two other people who were the shareholders at the time. Thereafter, Rufrano bought out the shares of Roger Stevens who was one of the founders. At this time, the shareholders of Island are Rufrano, Angelo DeMarco and the two sons of Stevens. As far as Island's management, the evidence shows that Rufrano is the President and Chief Executive Officer while DeMarco is the second in command. I also note that Rufrano has two daughters, Tracey D'Agata and Jessica Ondrush, both of whom, although having no ownership interest in the company, have worked for Island for many years.

Island and the Union have maintained a collective bargaining relationship for a number of years and the last collective bargaining agreement ran from July 1, 2009 to June 30, 2013. The bargaining unit consists of:

> All full-time and part-time production employees and installers employed by the Employer, excluding all shipping (including wrappers and packers), sanders, maintenance and clerical employees, salesman, professional employees, guards and supervisors as defined in the Act.

After the contract's expiration, the parties, with some delay, entered into contract negotiations. In this regard, the parties executed two consecutive interim agreements which extended the terms of the expired contract until a new agreement was reached or until either side gave notice of termination. At the present time, the company and the Union have not terminated the interim agreements and the company has continued to pay the wages and benefits in accordance with the terms of the expired contract. The evidence also shows that at least in some respects, the parties were fairly close to reaching a new agreement.

[1] The General Counsel's unopposed Motion to Correct the Record is granted.

A great deal of Island's business is derived from a long standing relationship that it has with the largest architectural firm in the world. Much of its production is done for major banks and other large financial institutions.

Before the great recession, one of Island's main customers was Lehman Brothers. And when that company imploded in 2008, Island lost a substantial amount of business not only from that customer but also from other bank customers who were affected by the financial crisis. Thus, in or about 2006, Island employed about 59 or 60 bargaining unit production employees, whereas by October 2013, that number had declined to about 30.

In or around 2007, Island began making a product which was a wood based demountable partition designed by the architectural firm. These were sold to and installed at Lehman Brothers. To explain, these were custom made floor to ceiling wood veneered/glass partitions that could be moved around to create different office spaces within a building. They were not the type of movable partitions that are typically used to create cubicle offices and they are not the same as other demountable floor to ceiling partitions that are made of metal, glass and cloth. The latter are much less expensive to make. This product was licensed to Island by the architectural firm and was given the name of "Island Verde Green Demountable System." This was marketed by the Respondent and was included in its product brochures and video sales material. The name "Verde" refers to the idea that the product would be produced with "green" materials and therefore would be an added inducement for potential customers.

At the time that Island was making these custom made demountable partitions for Lehman Brothers, Jeffrey Brite who was employed at the architectural firm, thought that they were great and wanted Island to expand this product so that it could be made on a larger scale and not simply on a custom limited edition basis. The problem was that as a premium product, the cost of producing these types of wood veneer partitions was a lot more expensive than producing the metal, glass and cloth partitions. And given the recession and cutbacks by potential customers, this idea was not feasible at that time. That is, the production of this type of product did not attract many customers and was expensive to produce for those limited orders that were received.

In or around 2008, Island hired an efficiency expert with the goal of increasing its competitiveness in the industry. The result was that new automated machinery was purchased and through "lean engineering" the entire manufacturing process was made more efficient. One result of this process was that by 2013, one of the three buildings that Island had previously used, became seriously underutilized and the bulk of the work was moved to the main building. (The second building was basically used as a warehouse).

The underutilized building was located at 20 Haynes Street and was called the back building. By September 2013, there were only five bargaining unit production employees working at the back building. By October 2013, there were only three, inasmuch as two were transferred back to the main building in September. The back building also contained a number of machines including two numerically controlled machines that although perfectly good, were not being used. Thus, for all practical purposes, by October 2013, there were about 25 plus production employees working at the main building and only 2 to 3 unit employees working at the back building.

During the period after the Lehman Brothers collapse and 2013, the Respondent apparently made a small number of sales of the Verde demountable partitions. But it does not seem that this generated much business on any regular basis. Nevertheless, people at the architectural firm still liked the product and were interested in producing these partitions in greater numbers on a more standardized basis. Rufrano, although thinking that this product might have a future, did not want at his age, to undertake the expansion of his business that this might entail; preferring instead to run a customized wood shop. As a result, Rufrano tried without success to sell its license to other companies.

The evidence shows that sometime in 2012 or 2013, Jeffrey Brite who worked at the architectural firm came up with the idea of creating a new enterprise to market the Verde demountable partitions. In essence, he rounded up some independent investors and in conjunction with Rufrano's daughters, they formed a new company called Verde Demountable Partitions, Inc.

The new company is owned as follows: Rufrano's daughters, Tracey D'Agata and Jessica Ondrush each have 32% of the shares. Jeffrey Brite, Allan Schatten, (a friend of Rufrano), and the architectural firm own the remaining 36% of the shares. Neither Rufrano, DeMarco nor the two Steven's sons have any ownership interest in the new company. There is no evidence that Rufrano advanced any money to his daughters in relation to the start up of Verde Demountable Partitions, Inc. There is also no evidence that any of the owners of Island have derived or expect to receive any financial gain from Verde Demountable Partitions.

Verde Demountable Partitions paid Island $750,000 for the product license. It also leased, at $11 per square foot, the back building that had previously been used by Island and was largely unused in October 2013. Additionally, Verde has leased from Island, the numerically controlled machines that were languishing in the back building with an option to purchase them at the end of the lease period for $1.

The evidence shows that from its inception, Island has performed certain services for Verde on a cost plus basis. These services included machine repair, wood finishing, and transportation. This originally was an informal arrangement that was incorporated into a written agreement executed a year later in October of 2014.

The parties entered into a stipulation that Island and Verde (a) employ the law firm of McGinity & McGinity for corporate filings; (b) employ the accounting firm of Shalik Morris, LLP; (c) have bank accounts at the same branch of Bank of America; (d) employ Hugo Cruz and Cathy (LNU) to clean their buildings; (e) utilize Jem Security Systems for fire and burglar alarm services; (f) utilize AXE at 6268 Jericho Turnpike in Commack, New York, for computer maintenance, (g) utilize Island employee Mike Menichini to service their production machines; (h) utilize Chris Vorisek and Joe Pecorella for plumbing services; (i) utilize Carr Business Systems to service their copier machines; (j) utilize D&D Electric Motors and Compressors for electrical work; (k) utilize Eniro HVAC Corp. for heat and air conditioning maintenance and (l) utilize Brentwood Door Co., to maintain and repair doors.

Additionally, the parties stipulated that Irek Sionina worked for Island before being hired by Verde.

Verde commenced operations in October 2013 in the back building after the Island employees who had worked there had been moved back to Island's main building. At the start,

Verde offered a job to and hired Jose Aguilera who was a long term employee of Island and who was in the bargaining unit. The evidence also shows that Verde hired Christian Questo, another production employee who had been employed by Island for only a very short time before October. Thereafter, all production employees hired by Verde were new people who had not been employed by Island. Thus, with these exceptions, there have been no instances of bargaining unit people leaving Island and going to work for Verde. [2] Further, there has been no interchange of bargaining unit employees between the two companies. Additionally, there is no evidence of any Island people supervising the employees of Verde and no evidence that there is any common control by either enterprise over the labor relations of the other.

The evidence shows that no bargaining unit employees of Island were laid off or discharged as a result of Verde's creation as a separate business enterprise. Nor is there any evidence that this has resulted in bargaining unit employees who have remained at Island, having suffered any diminution of their pay because of fewer hours worked. During this entire period, the Union and Island have been negotiating for a new collective bargaining agreement and the company has agreed to maintain the terms and conditions of the expired contract. As such, the creation of Verde has not resulted in Island's bargaining unit employees losing any of their existing benefits. As such, the creation of Verde as a separate enterprise, has not resulted in any harm to the existing complement of Island's bargaining unit employees. In my opinion, this mitigates against any conclusion that Island had the intent to evade its contractual obligations to its existing complement of employees who were represented by the Union.

The testimony was that as of the time of the hearing, the production and sale of the demountable partitions was not yet profitable. However, hope springs eternal, and when asked why he would burden his daughter with a loss producing business, Rufrano testified that he anticipated that this would eventually turn out to be a very profitable venture given the financial and marketing backing of the architectural firm.

With respect to the negotiations between Island and the Union, the evidence shows that bargaining for a new contract commenced in September 2013. At a meeting in November 2013, Rufrano notified the Union that his daughter was operating a new business in the back building. When asked about this, Rufrano stated that this was a separate business and that he had no financial interest in it.

At a meeting in February 2014, Rufrano met with the Union's president and asked that the Union release any claims to Verde's work or employees. Following this conversation, Island sent to the Union a Memorandum of Agreement that proposed that the Union agree that Verde's employees would not be part of the bargaining unit; that Verde and Island could not be construed as an alter ego or joint employer; and that the Union waive its right to file any past or future grievances over work performed by Verde's employees. When this was declined, the Union requested additional meeting dates. Based on the credited evidence, Rufrano declined to agree to any more meetings except on condition that the terms of the company's proposal be met. The testimony of the Union's representatives was that Rufrano asserted that the partitions could be manufactured more cheaply if it could be done under non-union rates.

III Analysis

[2] Jessie Capiello, a non-unit employee of Island, left that company to join Verde. He was employed as a person who designed products and was familiar with the design and production of the demountable partitions. As noted above, the parties stipulated that Irek Sionina worked for Island before being hired by Verde. But as far as I can tell, that person was not in the Island bargaining unit.

It is the General Counsel's contention that Verde is the alter ego of Island and therefore that Verde would be obligated under the Act to recognize and bargain with the Union as a single entity with Island. It also is contended that as an alter ego, Verde is obligated to make whole its employees to the extent that they were not paid the wages or benefits received by Island's employees. I don't agree.

In determining whether one employer is the "alter ego" of another, the Board looks to whether the two enterprises have "substantially identical management, business purpose, operation, equipment, customers and supervision, as well as ownership." *Advance Electric, Inc.,* 268 NLRB 1001 (1984), enfd. as modified, 748 F.2d 1001 (5th Cir. 1984); *Crawford Door Sales Co*., 226 NLRB 1144 (1976). The Board has held that no one factor is a prerequisite to finding an alter ego. *Perma Coating, Inc.,* 293 NLRB 803 (l989).

A finding of alter ego is often applied to situations in which the Board finds that what purports to be two separate employers are, in fact, one employer and where the contract signatory employer is either not honoring its bargaining obligations and/or there is a question of who should pay what is owed by an employer that has committed unfair labor practices. In some cases the issue of alter ego has been raised when one company ostensibly goes out of business to avoid liabilities, but then reopens under a new name. Other cases involve situations where a Respondent does not have the assets to satisfy a backpay liability and the General Counsel is seeking to find a deeper pocket. In still other cases, one company transfers bargaining unit work to another related company in an effort to avoid paying the contractual obligated wages and benefits to its employees. In all of these types of cases, the Board has held that it is relevant to consider whether the alleged alter ego was created for the purpose of evading a company's bargaining obligations.

Some courts, including the Second Circuit, have held that an alter ego can *only* be established, even if all other factors are present, if it has been shown that the new entity was created for the purpose of evading the original enterprise's legal obligations. (This would be similar in concept to a fraudulent conveyance). See *NLRB v. Lihli Fashions,* 80 F3d 745 (2nd Cir, 1996), where the Court affirmed the Board on the issue of single employer but reversed on the alter ego issue. In that case, the Court held that in order to find one employer to be the alter ego of another, (for purposes of derivative liability), there had to be evidence showing intent to defraud.

On the other hand, Board decisions have concluded that while a motive to avoid bargaining can help establish alter ego status, it is not a requirement to finding a violation or liability by the new entity because it is important to protect the interests of the employees, regardless of the employer's motive in making the corporate changes. See for e.g., *Allcoast Transfer*, 271 NLRB 1374 (1984), enfd. 780 F.2d 576 (6th Cir. 1986); *Johnstown Corp and/or Stardyne, Inc.,* 313 NLRB 170 (1993), enfd. in part 41 F.3d 141 (3d Cir. 1994); *CEK Industrial Mechanical Contractors*, 295 NLRB 635 (1989).

It is the Board's current view that a showing of intent to defraud may be a relevant but not a necessary factor. Thus, in *Park Maintenance et al.,* 348 NLRB 1373 (2006) a Board majority affirmed the Judge's alter ego finding, albeit then Chairman Battista stated that in his view, the General Counsel must show, among other things, an intent to avoid legal obligations under the Act in order to prove alter ego status.

In many of the cases I have reviewed, the outcome was pretty obvious as the facts were relatively clear cut and either showed that the involved companies were alter egos or not. This issue becomes a problem when the facts, such as those in the present case, are more ambiguous.

The evidence in the present case shows that Verde operates in the same sphere of business as Island; that it is located in a facility and uses machinery that used to be part of Island's operations; that Island performs significant services for Verde; and that at least two of Verde's owners are the daughters of the principal owner and chief executive officer of Island. Moreover, the business being done by Verde, (producing wooden demountable partitions), is work that was, at one time, done by Island.

On the other hand, the evidence shows that the owners of Verde are not the same people who own Island and Verde's ownership includes individuals and businesses that have no familial relationship with Island's owners. In addition, the evidence shows that Island's management does not exercise control over Verde's business operations; that Verde, and not Island, supervises, hires, fires and controls the labor relations of its own employees; that there is no interchange of production employees between the two companies; and that with two exceptions, Verde's production employees were not employed by Island contemporaneously with when Verde commenced its operations. Finally, the evidence shows that when Verde was created and commenced operations, this transaction had virtually no adverse affect on Island's bargaining unit employees who, despite the expiration of the existing contract, continued to be paid and receive benefits in accordance with the agreement between Island and the Union to continue the collective bargaining agreement. No bargaining Island unit employees were laid off and those who chose to remain employed by Island did not have their pay or existing benefits reduced.

There have been cases where the Board has concluded that two or more businesses which did not have common ownership were nevertheless alter egos.

For example in *Citywide Services Corp*., 317 NLRB 861 (1999), the Board held that two companies were alter egos based on the finding that a newly established corporation was in reality a "disguised continuance" of the older employer and was, in effect, a "sham." In that case, the prior company was called Citywide and the successor company was called Hudson. Citywide had been owned and operated by a person named Richmond and the evidence showed that in order to avoid paying money owed to Local 32B/J, he ostensibly went out of business, but through his wife, funded the start of Hudson, a company ostensibly owned by a man named Giacoia who was the former Vice President of Citywide. In addition, there was evidence that Richmond continued to be involved in Hudson's affairs after claiming that he had left the business. The Judge stated:

> It must be reemphasized that Hudson was formed 5 months before Citywide closed, and began operating 2 months before Citywide closed. Hudson was formed with capital from the Richman family, the sole investor. That transaction was not an arm's-length business arrangement which could be expected from two separate entities. The loan of $60,000 was not evidenced by writing, and it was repaid in cash in small amounts delivered to Richman. It may be said that management remained substantially identical. Richman took an active role in the formation of Hudson, participating in ensuring that a friendly union was obtained, and in directing the removal of equipment and supplies from Citywide to Hudson,

and in selecting the ‘‘best’’ workers for Hudson. Giacoia sought advice from Richman concerning whether Rivas should continue in Hudson’s employ.

The business purpose and operation of the two companies was identical: they were both involved in the commercial cleaning of offices. Hudson used much of the same equipment and supplies which it initially obtained from Citywide. Hudson’s customers were obtained from Citywide in the startup phase, and were solicited by Citywide’s sales representatives, who became employed by Hudson…. The supervisors, too, transferred from Citywide to Hudson. They supervised employees who also transferred from Citywide and who performed the same work, with the same equipment, for the same customers, when employed at Hudson…. Citywide paid Hudson’s first payroll, making such wage payments to employees who were transferred from Citywide to another company and then to Hudson’s payroll. Citywide also paid for the purchase of a fax machine, air conditioners, and the installation of a computer program. Large amounts of supplies and equipment were moved from Citywide to Hudson without compensation. Supplies left on jobsites by Citywide were, despite industry practice, not retrieved by that company, but were taken by Hudson, also without compensation. Citywide’s accounts were permitted to be solicited by its employees for Hudson, while still on Citywide’s payroll, and no compensation was made for those accounts, although Citywide had received payment for other accounts assigned to other cleaning companies.

It also appears that Hudson was formed so that Citywide could avoid its obligation to Local 32B. Citywide owed enormous sums of money to the Local 32B funds and simply stopped making payments to those funds. It is clear that Richman devised a plan to continue operation through Hudson with a new, more acceptable union, and make it appear that Citywide was closing its operations. This is supported by the testimony of Rivas that, beginning in early April 1991, Giacoia told him to replace the Local 32B members who were working on Citywide’s jobs with nonunion workers. The Local 32B employees were either laid off or had their hours reduced. He stated that at the time he left Citywide in October, 90 percent of the jobs were being serviced by nonunion workers.

I accordingly find and conclude that Hudson was merely a disguised continuance of Citywide, and that the closing of Citywide and the opening and operation of Hudson was motivated by a desire to avoid dealing with Local 32B and in an effort by Citywide to avoid its obligations to Local 32B. I therefore find that Hudson is an alter ego of Citywide. (Citations omitted).

In *Fugazy International*, 265 NLRB 1301 (1982), the Board found that two companies were alter egos notwithstanding their lack of formal common ownership. The facts of that case are too long to describe here but it is clear from the Board’s comprehensive decision that the evidence there, similar to the evidence in Citywide, revealed that the second company was, in effect, a sham enterprise, set up by the original owner for the purpose of evading legal obligations to a union. Indeed, as the owner of the second company was only there to disguise the continued ownership interest of the original owner, it should be concluded that there was common ownership; inasmuch as there really was only one owner. See also *American Pacific Concrete Pipe Co*., 262 NLRB 1223, 1226 (1982) where despite the lack of common ownership the Board found two companies to be alter egos when they had substantially identical business

purpose, operations, equipment, and where it was concluded that one exercised almost total control over the other's labor relations.

In some cases the Board has concluded that two or more companies were commonly owned where ownership of each, although held by separate persons, was held within a single family. For example, in *Kenmore Contracting Co.,* 289 NLRB 336 (1988), the Board found that two companies, owned respectively by the parents and their children, were commonly owned. In that case, the Board noted that the two Hanley children, who were the owners of nonunion Sloan Erectors, were financially dependent on their parents who were the owners of the unionized Kenmore, and that the children capitalized the company they ostensibly owned through indirect contributions from their parents. See also, *D.I.C. Mfg. Corp.,* 294 NLRB 426 (1989) involving a similar set of facts.

In *Advance Electric, Inc*., 268 NLRB 1001 (1984), the Board concluded that two corporations were alter egos because they were owned by members of the same family, had common management and supervision and because the newer company was created for the purpose of allowing the older company to evade its obligation to honor its collective bargaining with the Union.

In *First Class Maintenance Services*, 289 NLRB 484, 485 (1988), the Board explained its rationale for finding that nominally separate businesses owned by close family members should be considered, in some circumstances, to be commonly owned for alter ego purposes. It stated:

> [A] finding of substantially identical ownership is not compelled merely because a close familial relationship is present between the owners of two companies. Rather, each case must be examined in the light of all the surrounding circumstances. In particular, the Board focuses on whether the owners of one company retained financial control over the operations of the other….
>
> Applying this principle, the Board has indicated that it will only find common ownership in the "close familial relationship" context when "the owners of one company exercise considerable financial control over the alter ego." *Adanac Coal Co.*, 293 NLRB 290, 290 (1989) (finding no common ownership despite alleged alter egos being owned by brothers); see also *Midwest Precision Heating & Cooling, Inc.*, 341 NLRB 435 (2004), enfd. 408 F.3d 450 (8th Cir. 2005). Thus, the inquiry at the heart of the "close familial relationship" inference concerns the degree of *financial control* the owner of one company has over the other company. [3]

As indicated by the quotation cited above, the fact that two companies are owned by members of the same family does not mean, a fortiorari, that they should be construed as being alter egos even if they have some of the other indicia relevant to alter ego status.

[3] *First Class Maintenance* supra, was cited in support of the majority opinion in *US Reinforcing Inc*., 350 NLRB 404, 406 (2007). The latter case had an interesting twist inasmuch as the Board rejected the contention that there was common ownership based on the fact that the owner of a newly created company was the unmarried cohabitant of the owner of the old company. Although stating that it was not foreclosing this possibility in the future, the facts of the case did not sufficiently demonstrate that the owner of the old company exercised substantial control over the new company.

In *Cadillac Asphalt Paving Co*., 349 NLBB 6, 8 (2007), the Board held that two employers neither constituted a single employer nor were alter egos; albeit it concluded that one was a "successor" to the other. With respect to the issue of common ownership, the Board stated that it has only found alter egos in the absence of common ownership where both companies were "either wholly owned by members of the same family or nearly totally owned by the same individual or where the older company maintained substantial control over the new company." The Board also opined that although it will consider whether a second company was created in order to allow the old employer to "evade responsibility under the Act," unlawful motivation is not a necessary element of an alter ego finding. In reviewing the facts of the case, the Board noted that there was substantially common supervision and operations and that the two companies had substantially identical business purposes, equipment, premises and customers. Nevertheless, the Board refused to find that they were alter egos, stating that this evidence, "does not outweigh the aforementioned evidence showing separate ownership and control and the lack of identical management, as well as the lack of evidence to suggest that LLC was formed for other than legitimate business reasons."

In *L & J Equipment Co*., 274 NLRB 20, 27-28 (1985), the Board affirmed the decision of the Administrative Law Judge who concluded that a new business enterprise, Willow Tree, was *not* an alter ego of L & J, where the owners of Willow Tree were the children of the owners of L & J and where the two companies were engaged in substantially similar businesses. The Judge noted that Willow had received significant financial support from L & J in the form of unsecured loans at below market rates, plus debt forgiveness and forbearance. The Judge additionally noted that; "Willow Tree benefited in its formative period from the use of L & J's office facilities from family land connections; from L & J's co-indemnification agreement to support its land reclamation bond, from the extensive credit arrangements above described; from the generously flexible lease/purchase relationship on heavy equipment and from other operating items furnished gratis; from association with L & J or its satellite companies when Willow Tree applied for its mining license, and in other ways. L & J also was the principal purchaser of Willow Tree's coal."

Despite finding that Willow Tree had basically the same business purpose as L & J, and that it used some of the same equipment through generous lease agreements, the Judge concluded that Willow Tree was maintained as an independent corporation with respect to its operations and control of its own labor relations. The Judge concluded that between L & J and Willow, there were no common officers, directors, shareholders or supervisors and that there was no employee interchange. He concluded that after the summer of 1982, the two companies were physically and administratively apart where James Filiaggi controlled operations, administration, and labor relations for L & J, while Richard Filiaggi did the same for Willow Tree.

After considering the facts in the present case in light of the multi-factor test set forth in the cases described above, it is my conclusion that the balance of the evidence shows that Verde Demountable Partitions Inc., is not the alter ego of Island Architectural Woodwork, Inc. As such, I shall recommend that this allegation of the Complaint be dismissed.

The General Counsel also contends that the Respondent violated Section 8(a)(5) by insisting on a contract wherein the Union would agree that Verde's employees would not be part of the bargaining unit; that Verde and Island could not be construed as an alter ego or joint employer; and that the Union would waive its right to file any past or future grievances over work performed by Verde's employees. In this regard, the General Counsel contends that this was a

permissive subject of bargaining and under *NLRB v. Borg-Warner Corp*., 356 U.S. 342 (1958), the Respondent could not legally insist that the Union agree to this proposal.

The proffered Memorandum of Agreement contained a waiver of the Union's right to assert that Verde's employees were in the bargaining unit and to exclude any work performed by Verde's employees from coverage under any negotiated contract between Island and the Union. As stated by the General Counsel; "Clearly, this proposal was an attempt to cement Respondent's primary goal in creating the alter ego; remove the Verde partition work from the burden of the Union contract and ensure that Respondent Verde employees "would never e considered members of the bargaining unit."

Assuming that Verde was found to be an alter ego of Island, the Respondent's insistence on this proposal would be a violation of the Act because it would essentially be an attempt to alter the recognized collective bargaining unit. If Verde was found to be an alter ego of Island then any additional production employees hired by Verde would accrete to the existing bargaining unit. But if it is found that Verde is not an alter ego with Island, then the proposal merely insists on maintaining the status quo which would be that Verde's employees would not be part of the bargaining unit. And since I have concluded that Verde is not an alter ego of Island, then the insistence on this proposal, cannot violate Section 8(a)(5) of the Act.

Conclusion

For the reasons stated above, I conclude that the Complaint should be dismissed.

Dated: Washington, D.C. May 8, 2015

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Raymond P. Green
Administrative Law Judge